

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LYLE MARK COULTAS,

Plaintiff,

v.

STEVEN PAYNE, *individually and in his*
Official capacity as Oregon State Police
crime laboratory detective, et al.,

Defendants.

Case No. **3:12-cv-1132-AC**

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATION**

SIMON, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in the above-captioned case on November 27, 2012. Dkt. 40. Judge Acosta recommended that Defendant Oregon State Bar's Motion to Dismiss, Dkt. 27, be GRANTED. Plaintiff timely filed objections. Dkt. 44. Defendant has responded to those objections. Dkt. 45.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed

findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff appears to object to the entirety of Judge Acosta’s findings and recommendation.

The Court has reviewed *de novo* Judge Acosta’s findings and recommendation, as well as Plaintiff’s objections and Defendant’s response. The Eleventh Amendment “generally prohibit[s] federal courts from hearing suits brought by private citizens against state governments without the state’s consent.” *Sofamor Danek Group, Inc. v. Brown*, 124 F.3d 1179, 1184 (9th Cir. 1997). Because the Oregon State Bar is an instrumentality of the State of Oregon’s Judicial Department, O.R.S. § 9.010, and because the State of Oregon has not waived its sovereign immunity and Congress has not abrogated it, all of Plaintiff’s claims for damages against Defendant Oregon State Bar are barred by the Eleventh Amendment. *Accord Erwin v. Oregon*, 231 F. Supp. 2d 1003, 1007 (D. Or. 2001). The Court agrees with Judge Acosta that all claims against Defendant Oregon State Bar must therefore be dismissed.

The Court Orders that Judge Acosta’s Findings and Recommendation, Dkt. 40, are ADOPTED. Defendant Oregon State Bar’s Motion to Dismiss, Dkt. 27, is GRANTED.

Dated this 27th day of December, 2012.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge